not reported

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 270.

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS, PLAINTIFF IN ERROR,

vs.

J. ERNEST F. ZEH AND ALBERT SCHENCK, TRADING AS ZEH & SCHENCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED AUGUST 11, 1885.

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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Proof of service of citation	3	1
Caption	4	2
Petition for writ of certiorari	6	2
Order allowing certiorari	8	3
Writ of certiorari	9	3
Transcript from State court	11	4
Docket entries	11	4
Præcipe for summons	12	4
Summons	13	4
Sheriff's return	14	5
Appearance for defendant	15	5
Narr	16	5
Bill of particulars	18	6
Plea	19	7
Order for jury	21	7
Jury	21	7
Verdict	21	7
Motion for new trial	22	7
Order for judgment	24	8
Judgment	24	8
Bill of exceptions	25	8
Evidence for plaintiffs	25	8

	Original.	Print.
Testimony of William D. Smith	26	8
J. Ernest F. Zeh	26	9
Augustus Hague	50	17
James H. Magee	55	18
Anthony Winters	65	21
Herman Myers	69	23
Evidence for defendant	75	24
Testimony of James K. Ker	75	24
Edward B. Moore	85	28
Thomas Maddock	98	32
John H. Brewer	122	40
Evidence for plaintiff in rebuttal	134	44
Testimony of J. Ernest F. Zeh	134	44
Testimony of Charles Homer	137	45
Charge of the court	138	45
Exceptions to charge	146	48
Clerk's certificate	153	50

1 UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA, *Set.*

The President of the United States to the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between J. Ernest F. Zeh and Albert Schenck, trading as Zeh and Schenck, plaintiffs, and John F. Hartranft, collector of the customs for the district of Philadelphia, defendant, defendant in a plea of trespass in the case, a manifest error has intervened to the great damage of the said John F. Hartranft, as in his complaint has been stated—and that it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf. You are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ; so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this eleventh day of June, A. D. one thousand eight hundred and eighty-five and in the one hundred and ninth year of the independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss*:

To J. Ernest F. Zeh and Albert Schenck, trading as Zeh and Schenck, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit court wherein John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 26th day of June in the year of our Lord one thousand eight hundred and eighty-five.

WM. BUTLER, *Judge.*

3 I accept service of the within citation for J. Ernest F. Zeh and Albert Schenck, trading as Zeh and Schenck, defendants in error.

FRANK P. PRICHARD, *Att'y for Def'ts in error.*

JUNE 27, 1885.

4 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

J. ERNEST F. ZEH AND ALBERT SCHENCK, trading as Zeh and Schenck,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

April session, 1884. No. 26.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1884, No. 26.

It is thus contained: Be it remembered that on the fourteenth day of April, in the year of our Lord one thousand eight hundred and
5 eighty-four, the defendant, John F. Hartranft, collector of customs, &c., by his attorney, John K. Valentine, esquire, comes into court here and presents his petition for a writ of certiorari, which, being read, is as follows:

6 In the circuit court of the United States for the eastern district of Pennsylvania in the third circuit.

The petition of John F. Hartranft, collector of customs for the district of Philadelphia, respectfully represents:

That a suit has been commenced by summons case against him as defendant by J. Ernest F. Zeh and Albert Schenck, trading as Zeh and Schenck, in the court of common pleas, No. 2, for the county of Philadelphia, in the State of Pennsylvania, to March term, 1884, No. 743.

That the said suit is brought on account of an act done by him under the revenue laws of the United States, as collector of the customs for the district of Philadelphia; the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant as collector aforesaid, as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common pleas, No. 2, for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

J. F. HARTRANFT, *Coll.*

John F. Hartranft, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

J. F. HARTRANFT.

Sworn and subscribed before me this 12th day of April, 1884.

[SEAL.] E. S. SNYDER,
Notary Public.

I hereby certify that, as counsel for the above petitioner, I have examined the proceedings against him, and carefully enquired into all the

matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Def't.

8 And afterwards, to wit, on the 14th day of April, A. D. 1884, the court makes the following order, viz:

And now, to wit, this 14th day of April, A. D. 1884, on motion of John K. Valentine, esq., United States attorney, a writ of certiorari is allowed in the above cause for its removal from the court of common pleas No. 2 for the county of Philadelphia to this court.

9 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct.:

The President of the United States to the honorable the judges of the court of common pleas No. 2 for the county of Philadelphia and State of Pennsylvania, greeting:

Whereas, lately in your said court of common pleas No. 2, suit has been commenced against John F. Hartranft, collector of customs for the district of Philadelphia, by J. Ernest F. Zeh and Albert Schenck, trading as Zeh & Schenck, of your March term, 1884, No. 743, which said suit, as it is said, is still pending before you in the said court of common pleas No. 2, undetermined, and whereas on the application of the said John F. Hartranft, collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him under color of his office as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said John F. Hartranft, collector, &c., aforesaid, for duties on certain merchandise claimed to be due and owing from the said plaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas No. 2, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provision of the act of Congress in such case made and provided.

Wherefore you are hereby commanded to transmit under your seal the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of May next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fourteenth day of April, A. D. 1884, and in the 108th year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court, U. S.

10 (Indorsed:) No. 26. April sess., 1884. Circuit court, U. S. Zeh et al. vs. Hartranft, collector, &c. Writ of certiorari. Returned and filed May 2, 1884.

11 *Exemplification.*

PHILADELPHIA COUNTY,
State of Pennsylvania, sct.:

Among the records and proceeding of the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 743, Mch. term, 1884, to wit:

Docket entries, March term, 1884.

J. ERNEST F. ZEH AND ALBERT SCHENCK, trading as Zeh and Shenck, *vs.* JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.	Sum's case. Exit Ap'l 2, 1884. Ret. 1 Mon. Ap'l, 1884. Served.

F. P. Prichard. 743. J. K. Valentine, Ap'l 5, '84.
April 16, 1884, certiorari from circuit court of U. S. brought into office.
Ap'l 18, 1884, narr. filed.
Certified from the record this 25th day of Ap'l, 1884.
[SEAL.] F. H. SMITH,
Pro Proth'y.

12

J. ERNEST F. ZEH AND ALBERT SCHENK, trading as Zeh and Shenk, *vs.* JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.	C. P. No. Mch. term, 1884. No. .

Issue summon case as above returnable first Monday April inst.
FRANK P. PRICHARD,
Att'y for Plff's.

To PROTH'Y, C. P.,
April 2, 1884.

(Indorsed:) 743, March term, 1884. C. P. 2. Zeh & Schenck vs. Hartranft. Præcipe for sum's case. Filed Apr. 2, 1884. F. P. Prichard.

13 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania, to the sheriff of the county of Philadelphia, greeting:

We command you that you summon John F. Hartranft, collector of customs for the district of Philadelphia, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas No. 2, for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of April inst.,

there to answer J. Ernest F. Zeh and Albert Schenck, trading as Zeh & Schenck, of a plea of trespass on the case, etc. And have you then there this writ.

Witness the honorable J. I. Clark Hare, president of our said court, at Philadelphia, the second day of April, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] E. C. MANDERSON,
Pro Prothonotary.

14 (Indorsed:) 743. March term, 1884. C. P. No. 2. Zeh & Schenck, vs. John F. Hartranft, collector, &c. Summons case. Prichard.

Served John F. Hartranft, collector, &c., by giving to him April 3, 1884, a true and attested copy of the within writ, and making known to him the contents thereof.

So answers.

A. ALBRIGHT,
Deputy Sheriff.
GEO. DE B. KEIM,
Sheriff.

15 J. ERNEST F. ZEH ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR, &c. } C. P. No. 2, March T., 1884. No. 743.

The proth'y will enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Att'y for Deft.

To PROTH'Y, C. P.

(Endorsed:) 743. March T., 1884. C. P. No. 2. J. Ernest F. Zeh et al. vs. John F. Hartranft, collector, &c. Order for appearance. Filed Apr. 5, 1884. John K. Valentine, att'y for deft.

16 In the court of common pleas No. 2 for Philadelphia County, of March term, 1884.

J. ERNEST F. ZEH AND ALBERT SCHENCK, trading as Zeh & Schenck,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia. } No. 743.

Philadelphia County, *ss:*

John F. Hartranft, collector of customs for the district of Philadelphia, late of the county aforesaid, was summoned to answer J. Ernest F. Zeh and Albert Schenck, trading as Zeh & Schenck, of a plea of trespass on the case, &c. Whereupon the said J. Ernest F. Zeh and Albert Schenck, by Frank P. Prichard, their attorney, complain—

17 And also, for that whereas the defendant, on the first day of April, in the year of our Lord one thousand eight hundred and eight-four, at the county aforesaid, was indebted to the plaintiffs in fifty thousand dollars for goods then and there sold and delivered by the plaintiffs to the defendant at his request.

And also in the further sum of fifty thousand dollars for goods then and there bargained and sold by the plaintiffs to the defendant at his request.

And also in the further sum of fifty thousand dollars for work then and there done, and materials for the same, provided by the plaintiffs for the defendant at his request.

And also in the further sum of fifty thousand dollars for money then and there lent by the plaintiffs to the defendant at his request.

And also in the further sum of fifty thousand dollars for money then and there paid by the plaintiffs for the use of the defendant at his request.

And also in the further sum of fifty thousand dollars for money then and there had and received by the defendant for the use of the plaintiffs.

And also in the further sum of fifty thousand dollars for money found to be due from the defendant to the plaintiffs on an account then and there stated between them.

And also in the further sum of fifty thousand dollars for interest then and there due and payable, for the forbearance by the plaintiffs at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs.

And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned premises, respectively then and there promised the plaintiffs to pay them the said several last-mentioned moneys respectively on request; yet the defendant hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the damage of the plaintiffs fifty thousand dollars.

And therefore they bring suit, &c.

FRANK P. PRICHARD,
Attorney for Plaintiff.

April 17, 1884.

17 (Indorsed:) Court of common pleas No. 2, Philadelphia County. No. 743. March term, 1884. Zeh & Schenck vs. John F. Hartranft, collector, &c. Narr. in assumpsit. Prothonotary will enter a rule to plead in eight days, or judgment, sec. reg. Filed April 18, 1884. Frank P. Prichard, plaintiff's attorney.

18 *Bill of particulars. Name of importer (for all the importations). Zeh and Schenck.*

Description of goods.—Toy teas, mugs, & plates. *Whence imported.*—Liverpool.

Name of vessel.	Date of invoice.	Amount of duty illegally exacted.	Date of entry at custom-house.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
	1883.		1883.	1883.	1883.	1883.	1884.
Lord Gough	Aug. 31	46 00	Sept. 20	Sept. 21	Nov. 8	Nov. 8	Jan'y 2
Lord Clive	Sept. 14 / Sept. 17	66 00	Oct. 10	Oct. 10	Nov. 8	Nov. 8	Jan'y 2
Br. Crown	Sept. 28	38 25	Oct. 19	Oct. 20	Dec. 3	Dec. 3	Jan'y 29
Ohio	Oct. 13	17 50	Nov. 2	Nov. 2	Dec. 3	Dec. 3	Jan'y 29
Br. Prince	Oct. 25	3 75	Nov. 8	Nov. 8	Dec. 3	Dec. 3	Jan'y 29
Lord Clive	Oct. 23	62 75	Nov. 19	Nov. 19	Dec. 3	Dec. 3	Jan'y 29
Illinois	Nov. 2 / Nov. 3	52 00	Nov. 23	Nov. 24	Dec. 3	Dec. 3	Jan'y 29
Pennsylvania	Nov. 15 / Nov. 13	61 25	Dec. 6	Dec. 6	Dec. 28	Dec. 28	Feb'y 27
Br. Princess	Nov. 20	95 50	Nov. 20	Dec. 10	Dec. 28	Dec. 28	Feb'y 27

pleas No. 2, for the county of Philadelphia, to be holden at Philadelphia, [illegible] of Philadelphia, the first Monday of April inst.

19 And afterwards, to wit, on the 10th day of June, A. D. 1884, the defendant, by his attorney, John K. Valentine, esq., file his plea as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

J. ERNEST F. ZEH ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } April sessions, 1884. No. 26.

And the said defendant, by John K. Valentine, esquire, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Attorney for Defendant.

20 (Indorsed:) No. 26. April sessions, 1884. In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit. J. Ernest F. Zeh et al. vs. John F. Hartranft, collector, &c. Plea of defendant. Filed June 10, 1884. John K. Valentine, attorney for defendant.

21 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the sixth day of April, A. D. 1885, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise came, to wit: (1) Samuel W. Woodhouse, (2) Albert O. Allen, (3) John Cather, (4) Charles T. Matheys, (5) Hugh O'Neill, (6) Alexander Klink, (7) Edwin F. Poulterer, (8) Charles Stokes, (9) William C. McKnight, (10) Thomas T. Miller, (11) Daniel G. Evans, (12) Amos Gartside, who are duly empaneled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the 7th day of April, A. D. 1885, the jurors aforesaid upon their oaths or affirmations aforesaid, respectively, do say that they find for the plaintiffs, and assess the damages at four hundred and seventy-nine $\frac{79}{100}$ dollars ($479.79).

22 And afterwards, to wit, on the 11th day of April, A. D. 1885, the defendant, by his attorney, John K. Valentine, esq., comes into court here and files a motion for new trial in the following words, to wit:

J. ERNEST F. ZEH ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR. } C. C. U. S. April sess., 1884. No. 26.

And now, to wit, April 11, 1885, the defendant, by John K. Valentine, esq., his attorney, moves the court for a new trial in the above case, and assigns the following reasons in support thereof:

1. Because the verdict was against the law.
2. Because the verdict was against the evidence.

3. Because the learned judge declined to affirm the 3, 4, 5,
23 6, & 7 points of the defendants without modification.

(Endorsed:) 26. April sess., 1884. C. C. U. S. J. Ernest F. Zeh et al. vs. John F. Hartranft, collector, &c. Motion for new trial. Filed April 11, 1885. John K. Valentine, U. S. Att'y.

24 And afterwards, to wit, on the 22d day of April, A. D. 1885, come the parties aforesaid, and this cause being called for argument on motion for a new trial, and having been argued by counsel for the respective parties and duly considered by the court it is ordered that judgment be entered on the verdict in favor of the plaintiff and against the defendant for the sum of four hundred and seventy-nine $\frac{79}{100}$ dollars ($479.79).

Whereupon judgment is entered accordingly.

25 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of April sessions, 1884, No. 26.

J. ERNEST F. ZEH AND ALBERT SCHENCK, (trading as Zeh and Schenck,)
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

Be it remembered, that in the said sessions of April, A. D. 1884, came the said plaintiff into the said court, and impleaded the said defendant in a certain plea of trespass on the case, &c., in which the said plaintiffs declared (prout narr.) and the said defendant pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the honorable William McKennan, judge of the said court, on Monday, the sixth day of April, A. D. 1885, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empannelled (prout list of jurors), at which day came as well the said plaintiffs as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid impannelled to try the said issue being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiffs called

26 WILLIAM D. SMITH sworn.

By Mr. PRICHARD:

Q. You are the deputy collector of the port of Philadelphia, are you?

A. Yes, sir.

Q. Look at these bills of particulars I now hand you, and say whether the protests were made and the appeal to the Secretary of the Treasury in due form.

A. Yes, sir; they were.

Q. That is in case No. 26, of April sessions, 1884?

A. Yes, sir.

J. ERNEST F. ZEH sworn.

By Mr. PRICHARD:

Q. You are a member of the firm of Zeh & Schenck, the plaintiffs in this suit, are you?

A. Yes, sir.

Q. These are samples, are they not, of the articles imported in these importations?

A. Yes, sir.

27 Q. They were all of this character; those cups and saucers in the tea-sets, and the lettered plates and ornamented mugs?

A. Yes, sir.

Q. What are those tea-sets, mugs, and plates known as commercially?

A. They are known as toys.

Q. What is their use and purpose?

A. They are for the amusement of children.

Q. Are they or are they not manufactured expressly for that purpose?

A. They are manufactured especially with the idea of amusing children with them. They are of an inferior grade. Apprentices make them; inferior hands make them.

Q. You have been in the factories yourself and have seen the goods made, have you?

A. Yes, sir.

Q. What is the difference between this grade of ware and ordinary earthernware?

28 A. First of all, the cups are larger than these for dining purposes, and the articles themselves are made in a better manner. The printing is a great deal better than on these plates. This is all rubbish on these.

Q. How about the quality and workmanship?

A. These are of inferior workmanship, because the apprentices make them; girls make them; they are for children.

Q. How do they compare in price with ordinary earthenware?

A. They are a great deal cheaper than the larger pieces of that description.

Q. What are about the prices of these tea-sets?

A. They cost about one shilling and seven pence a set, seven and a half per cent. discount. These cups and saucers cost about one shilling a dozen; that is, twelve cups and twelve saucers.

Cross-examined:

By Mr. VALENTINE:

29 Q. How long have you been in business?

A. About twenty-five years, and as a member of this firm about thirteen ro fourteen years.

Q. What is your business?

A. We are importers of china toys, earthenware, and fancy goods.

Q. How long have you been importers of toys?

A. As long as we have been in business.

Q. What kind of toys do you deal in?

A. Whistles, china babies, toy cups and saucers, toy tea-sets, toy plates, toy mugs, and toy figures.

Q. What else do you deal in, in toys, other than what you have mentioned?

A. Toy watches, French and toy clocks.

Q. What do you mean by toy clocks?

A. They are used to amuse children with.

Q. Is it of earthenware?

A. No, sir.

Q. You say you have been dealing in toys in your establish-
30 ment ever since you have been in business?

A. Yes, sir.

Q. How long have you been importing articles like this tea-set?

A. About two years. We have imported other toy tea-sets a longer time than that. The Government always put fifty per cent. duty on them. We tried to get them through at 45 per cent., but they would not allow us; they said they were toys?

Q. You called them earthenware then?

A. No, sir; they were chinaware; they were made out of china.

Q. Did you not try to pass them at forty per cent.?

A. No, sir; at forty-five.

Q. What as?

A. As chinaware.

Q. You claimed they were chinaware then. Years prior to the time you speak of, you claimed they were chinaware, did you not?

A. No, sir; we claimed they were toys.

31 Q. If you claimed they were toys, you claimed that they should pay a higher rate of duty?

A. Yes, sir.

Q. Then there was no question about it?

A. We made a question whether they could not be entered as chinaware, and they said no, they were toys.

Q. Did you not then protest and appeal against that?

A. No, sir; the difference was so trifling it was not worth while.

Q. But you claimed that they should be classified as chinaware?

A. We did not claim anything. We only asked the question whether they could not be passed as chinaware.

Q. You say that until two years you never imported anything of this kind?

A. We did not import that kind.

Q. Were those others you speak of as large as these, or smaller?

32 A. As large and smaller, both.

Q. How are these packed?

A. They are packed 120 sets in a hogshead?

Q. Are they packed by themselves or with larger sizes?

A. These are packed by themselves.

Q. Is other earthenware put up now promiscuously, the larger and smaller sizes, or is each size packed by itself?

A. You can have them packed whatever way you want them.

Q. Do you not have these packed up in order to classify them as toy tea-sets?

A. No, sir; we buy nothing else, except them, of that manufacturer, because we can buy them cheaper there than anywhere else. We buy no other earthenware of those manufacturers, except the toy tea-sets.

[illegible] of Philadelphia, the first Monday of April inst.

Q. You do buy other earthenware of other persons?

A. Yes, sir.

Q. Then do you not have them put up promiscuously without
33 regard to size?

A. They will put them up any way you want them. They put these up separately, because we do not get anything else from them.

Q. Prior to two years ago, did you import that article at all?

A. No, sir; we did not import that article.

Q. Prior to two years ago, when you imported this china, how was it packed; were these toy sets packed with the others or separately?

A. We did not import any of those.

Q. That was not my question. How were those packed you did import; were what you called toys packed separately?

A. Separately.

Q. You had them imported in that way?

A. Yes, sir.

Q. Why?

A. Because we sold these by the hogshead. We could not have sold them as cheap as we did if we had had to unpack and repack
34 them; they came in cases; they were put up separately.

Q. In sets, but not in different boxes and different packages?

A. They were put up separately in boxes. For instance, one box would contain ten dozen or five dozen; boxes similar to those.

Q. Do you mean to say that each toy tea-set was put in a box separately by itself?

A. All German tea-sets are put up in boxes separately by themselves, and then put up together in different boxes.

Q. Similar to those?

A. Yes, sir.

Q. My question was whether, prior to two years ago, these articles were put up separately or put up with other and larger china?

A. I cannot remember so well. The duty then was precisely the same on those tea-sets as on chinaware, so it did not make any difference how they were imported.

35 Q. Now, you say that these are separated from the other china?

A. Those toy tea-sets all came in those boxes; all the German ones. We do that because the packing on the other side, in Germany, is a great deal cheaper than we could get it done here.

Q. Prior to two years ago did you not import something of this size that came with your other goods as chinaware or as earthenware, and about that quality?

A. I think we had some that were better than those.

Q. As earthenware, put up with the others?

A. No, sir; not put up with the other; always kept separate. We always had our English toy tea-sets put up separate.

Q. My question is, prior to two years ago, whether you did not import something like that as earthenware, done up in the same way as your other earthenware; not separate?

A. Prior to two years ago we imported toy tea-sets better than that; nothing as common as that.

36 Q. Prior to two years ago, did you not import earthenware something like this set here, that was put up with your other earthenware?

A. No, sir; we never had anything put up in that way as earthenware. Whenever we imported anything like toy tea-sets, they were always put up separate.

Q. Do you mean to say you never imported anything like this prior to two years ago?

A. We imported something better.

Q. Was not that put up with the other?

A. No, sir.

Q. How did you import that?

A. By the hogsheads, as toy tea-sets.

Q. Did you invoice it as toy tea-sets?

A. Yes, sir.

Q. How was it packed?

A. Packed loose.

Q. How was it packed in the custom-house?

A. That I do not remember now.

Q. Do you not remember that it was classified as earthenware?

A. I do not remember; it might possibly have been classed as
37 earthenware and it might have been classed as toys; I do not remember.

Q. Do you not know that it was classified as earthenware and invoiced as earthenware?

A. No, sir. To my best remembrance, we always had all our toy tea-sets entered and invoiced as toy tea-sets.

Q. Do you say that prior to two years ago you invoiced and entered the same earthenware you speak of as toys in such a way that you paid 50 per cent. duty, instead of as earthenware on which you have paid forty per cent. duty?

A. I do not remember that.

Q. How are these invoiced now?

A. As toy tea-sets, toy mugs, toy plates.

Q. What is this? [Showing sample.]

A. That is a toy tea-set.

Q. Is it earthenware?

A. It is made out of earthenware. It is for the specified purpose of toys.

Q. It is earthenware?

38 A. Yes, sir; it is made out of clay, common clay.

Q. What is this mug I show you?

A. That is a toy?

Q. What is it made out of?

A. Common clay.

Q. Is it not earthenware?

A. It is made of common clay, called earthenware,

Q. Are these plates earthenware?

A. They are all made out of common clay, for children's amusement, to play with.

Q. That is another point. I am asking now as to what material these articles are made of. Are they not what is known as earthenware?

A. They are common clay.
Q. Is it what is called earthenware?
A. Yes, sir; that is what we call it.
Q. You say this is earthenware?
A. Made of earthenware. I say it is made out of earthenware.
Q. Do you mean it is made out of the same material as earthenware is made out of?
39 A. Yes, sir.
Q. If these were a little larger, would not you call them earthenware?
A. I would not call a teapot double or three times as large as that anything but earthenware.
Q. Then these same articles, if double or triple the size, you would call earthenware?
A. Yes, sir.
Q. Then is it not the fact that the use for which this is designed is what determines in your mind what to call it?
A. Yes, sir.
Q. Then if this teapot was something larger it would be earthenware, and not a toy?
A. Not a toy.
Q. You say these lettered plates are toys?
A. Yes, sir.
Q. Because the letters are on them?
A. Yes, sir; they are common ware.
Q. They are common earthenware with certain decorations on them, are they not?
40 A. They are very ordinary ware, and they are toys. They are known as such, sold as such, and used as such.
Q. Are they not ordinary earthenware with letters and certain decorations on?
A. They are made of earthenware. I would not call them earthenware. I called them toy plates.
Q. But if the letters were not on there, would you not say those plates were earthenware?
A. Certainly, they would not be earthenware if they were this *glass* of goods.
Q. But if they had no letters on them, would you not say they were earthenware?
A. They are other things on them besides the letters. If that was a plain white plate I would call it earthenware, but as long as it is the way it is there I call it a toy plate. There are not only letters on these plates, but inscriptions and mottoes to amuse children.
41 Q. If this plate did not have the letters and that animal and the word "donkey" on it, you would say it was earthenware?
A. Yes, sir.
Q. If this did not have the letters and "evening bathing scene at Manhattan Beach," you would call it earthenware?
A. Yes, sir.
Q. If the letters were not on this plate you would not call it a toy plate?

A. No, sir.
Q. Did you ever hear that called a toy plate?
A. I have heard it, and hear it most every day.
Q. In your store?
A. We have orders for it from out West.
Q. As a toy plate?
A. Yes, sir.
Q. Is that not what is commercially known as an a-b-c plate?
A. No, sir; that is a toy plate. Some people call it a toy muffin.
42 Q. Is not the word a-b-c used commercially?
A. It is very seldom; most always "toy plate."
Q. Would you know what they meant if they used the term a-b-c?
A. If the' said "a-b-c plate" I would know what they meant, and if they said toy plate I would understand that.
Q. Would you understand it to be a toy plate also without the letters?
A. Yes, sir.
Q. What is that? (Handing witness invoice.)
A. "One hundred dozen earthenware toy muffins, six-inch, plain, printed, and 50 dozen toy muffins, a-b-c" That is a further description of it.
Q. Is not the word "toy" interlined there?
A. On that first item it is, but you will find in all the rest it was not, and if you look over the other invoices you will find it was not
43 omitted. It was an oversight.
Q. Did you not instruct them to invoice the goods as toys?
A. No, sir.
Q. Did you never have any correspondence with them on that subject?
A. I think we did write to them to call the toys, toys. I am not quite sure now. These have always been toys.
Q. If they had always been so, why did you write to them to call them toys?
A. Because they sometimes omitted it.
Q. When did you write them to call these articles toys?
A. I think it must have been in 1882, or thereabouts. I was over there.
Q. Has it not been within two years?
A. No, sir; because they were always known as toy plates, and the English manufacturers call them toys on their printed lists.
44 Q. Do you say that two years ago you wrote over there?
A. I do not think I wrote any, because I was over there.
Q. When were you there?
A. I was there last year.
Q. Was that when you told them?
A. No, sir.
Q. What is that? (Showing sample.)
A. That is a toy mug.
Q. Is that a plaything?
A. Yes, sir.
Q. Is that not for use?

A. It is a plaything for children, to learn their a-b-c's; the a-b-c's are on it.

Q. Is that not a drinking cup for a child?

A. I think not. If I had a child I would want something better for it for a drinking cup.

Q. That would not be so used?

A. No, sir.

Q. It could be used for that purpose?

A. Yes, sir.

Q. Are these cups not used largely for that purpose?

A. It is for the amusement of children. We call it a toy mug,
45 and sell it as a toy mug, and if a man orders toy mugs that is the kind we send him.

Q. Are not these plates used for children?

A. For children's amusement.

Q. Are they not used for ordinary purposes for children?

A. For children's amusement; if they choose they can eat from them. They are used exclusively as playthings.

Q. How do you know that?

A. Because I have seen children playing with them.

Q. Is that not the same sized plate used by persons? Is it not as large?

A. They use larger and smaller and the same size.

Q. What would you call that? (Exhibiting a small white pitcher).

A I would call that a restaurant cream.

Q. It is a great deal smaller than what you call a toy pitcher?

A. Yes, sir. I do not call this a toy by itself, but I call the
46 whole set there (indicating) a toy tea-set.

Q. Then if this cream pitcher were taken out by itself you would not call it a toy?

A. I would not know what to call it, for I never imported them in that way.

Q. But you would not call it a toy?

A. They are not imported separately.

Q. Do you deal in this article (indicating)?

A. Yes, sir; I have. It is better, because it is china ware.

Q. You would not call this a toy set?

A. No, sir.

Q. If you had these little cups and saucers put together you would call them a toy set?

A. They would not go very well together; they would not match. It is not the same ware. This (referring to article produced by Mr. Valentine) is what the restaurants use.

Q. If you put these articles together you call them a toy tea-
47 set, and if you have them separately you do not call them toys, as I understand you?

A. If I imported a lot of those creams I would certainly call them creams and nothing else. I could not sell those blue ones as creams.

Q. Do you not import them in white china, like this (showing sample decorated in blue)?

A. No, sir; not smaller or larger. This article is not an imported one; it is domestic.

Q. Would you call that a tête-à-tête set?
A. No, sir.
Q. Do you not sell them as tête-à-tête sets?
A. No, sir; never. We sell more of those by the hogsheads than singly. This is certainly nothing else than a toy (referring to a small white cup handed witness by Mr. Valentine).
Q. What is that (showing a larger cup)?
A. I call that an after-dinner cup; it is beautifully finished.
Q. Could not this set here be used as an after-dinner coffee set?
48 A. That could be used for that purpose, if anybody was foolish enough to do it; but it is not the intention to use them for that purpose.
Q. Are they not larger than many after-dinner sets?
A. They are about the same size; some are larger and some are smaller. But I never saw one of those used for after dinner. I have sold, in my day, I suppose, about a thousand gross.
Q. You said something about these being of an inferior quality?
A. Yes, sir.
Q. If they were a better quality what would you call that blue set?
A. I would call it a toy tea-set.
Q. How much better quality would that have to be in order to cause you to call it an after-dinner coffee-cup?
A. I would have to see the article to decide it; I cannot go blind on it.
Q. If you had a tête-à-tête set of the same size as this made up,
49 would you call it an after-dinner coffee-set?
A. It would depend on the shape of the tea-pot and all that.
Q. Suppose it was similar in all respects to that cup and conformed to it, would you call it a tête-à-tête set?
A. I would call it a tête-à-tête set.

Re-examined by Mr. PRICHARD:

Q. Do they, in point of fact, make or sell the larger size tea-pots or the plates for table use of this quality of workmanship?
A. They do not sell them. We would not buy them; they are too common.
Q. In point of fact, they would not make a tête-à-tête set of them?
A. No, sir.
Q. They are not made and sold in the trade for that purpose?
A. No, sir.
Q. They are known in the English trade as toy tea-sets?
A. Yes, sir; they only make one size there in the potteries. I
50 have been there, and I have never seen but that one size.
Q. Are those in the price-lists?
A. Yes, sir.
Q. That is the general price-list made for the trade [showing witness a paper]?
A. Yes, sir.
Q. What are these identical articles called on that list?
A. Toy tea-sets, toy muffins, four, five, six inch toy cans.

AUGUSTUS HAGUE sworn.

By Mr. PRICHARD:

Q. What is your business?

A. Importer of toys.

Q. What is the name of your firm?

A. George Doll & Company.

Q. Look at those things before you and say what they are known as commercially in the trade?

A. As toys.

Q. What is the object and purpose of them?

A. For children to play with.

51 Q. You are in the toy business and deal in similar articles?

A. Yes, sir; we have never kept these mugs, but the tea-sets and plates we have kept.

Cross-examined by Mr. VALENTINE:

Q. What do you call these plates?

A. Pottery or earthenware.

Q. That is the general name?

A. Yes, sir,

Q. When you come to classify them particularly, what would you call this set [showing sample]?

A. I would call that, by the appearance of it, a tea-set.

Q. Would you not call it a tête-à-tête set?

A. No, sir; a tête-à-tête set is generally of a finer grade.

Q. Is not this plate quite as large as that of a tête-à-tête set?

A. Yes, sir; cups and saucers as large as those and as small are used in a tête-à-tête set, but they are made of much finer material.

52 Q. Are these not as large as ordinary after-dinner cups?

A. They are about that size.

Q. Many after-dinner coffee-cups are smaller than these?

A. Yes, sir.

Q. You are with George Doll & Co. now, are you?

A. Yes, sir.

Q. Do you deal in china or earthenware?

A. We have but very little earthenware; mostly china, with the exception of those cups and saucers and plates.

Q. Are all the articles you have in your store exclusively toys?

A. No, sir; we have some cups and saucers for used.

Q. Do you not sell such as these [blue set] for use?

A. No, sir.

Q. How do you know they are not used?

A. They are mostly called, in our place, toys.

Q. But how do you know they are not used?

53 A. That I do not know; I suppose they could use them if they wanted to.

Q. Have you imported this very identical article here?

A. No, sir; never did; we buy them, but do not import them; we buy and sell them; we have bought them of different places here.

Q. How long have you been dealing in that particular kind of article?

A. I suppose about two years.

Q. Before that, did you ever have them?

A. I do not think we had exactly the same finish, but something similar; something more that color [referring to sample decorated in brown].

Q. I am speaking of this blue set.

A. I do not think we had any before that time.

Q. Prior to that time did you ever know of this particular article being for sale?

A. I have seen them; I have seen larger and smaller sizes; I should think they were all toys.

Q. Were not these bought differently?

54 A. Goods like these were always bought as toys; common ware, such as that, cannot be used for anything else but toys.

Q. I understood you to say you never bought any of those or sold any except within two years.

A. Yes, sir; within two years. Goods like that we have bought for years.

Q. This is an after-dinner coffee-cup, is it not?

A. No, sir; that is a toy set. We have those larger and smaller.

Q. Most of them in ordinary use are not as large as that?

A. Most are of medium size.

Q. What are these a-b-c plates?

A. I should think they are toy plates. We buy and sell them. We have orders for some of them from our customers. We call them toy plates.

Q. Do you not call them a-b-c plates?

A. We call them a-b-c plates too.

Q. Do you not know them in the trade as a-b-c plates?

A Yes, sir. Those sending orders generally say toy plates with a-b-c's.

55 Q. How long have you called them by that name?

A. I should think four years; for a number of years. They are only used by children to play with.

Q. May they not be used to eat off of.

A. Certainly they may.

Q. How about this mug?

A. That is a toy mug.

Q. Is it not an article used by children for drinking purposes?

A. If they play with it, they may drink out of it; yes, sir.

JAMES H. MAGEE sworn.

By Mr. PRICHARD:

Q. What is your business?

A. I am engaged with Conway Brothers, in the importation of toy goods generally.

Q. You have been in that business for how many years?

A. About twenty-one years.

56 Q. Look at those things before you and say what their commercial designation is; what they are bought and sold as?

A. We have been buying and selling similar goods as toys always. Their object and purpose is for children to play with to amuse themselves with.

Q. How do you distinguish between this toy ware and ordinary earthenware?

A. In the first place, they are made of material not so carefully selected and tempered; they are made by persons not so well skilled; inferior and cheap labor, as children and apprentices, make them; they are bought at a much less price than similar goods regularly made for domestic use.

Q. Can you tell from the general character of the goods, the finish and decoration, whether an article is a toy tea-set as distinguished from articles of the same size for tableware?

57 A. Not distinctively, although they are always more carefully made. There is not the same care taken in making the toys; they are not so true and accurate in shape and thickness, and the consistency of the material and finish. Little defects that would condemn the ordinary domestic ware are passed over in these toys. In regard to the decoration there is not the same care taken. In the ordinary ware the gilding is fire-gilt, and in the toy sets it is water-gilt; anything that will pass for the time.

Q. Then one accustomed to handle these goods could always tell, in large quantities of the goods, the toys from the tableware.

A. As a general thing they can readily.

Q. What do you call that article Mr. Valentine has produced here?

A. I call that a regular after-dinner coffee-cup. That is one of the cheaper grades of chinaware.

Cross-examined by Mr. VALENTINE:

Q. How long have you been in business?

58 A. About twenty-one years.

Q. What is your business?

A. My business is attending to estimating the valuation of duties on the wares we import, entering them at the custom-house, and passing them through.

Q. What is your firm's business?

A. Importing generally; toys and other things of that kind. We have from time to time imported these articles.

Q. Do you deal in earthenware largely?

A. No, sir. Not in earthenware to any great extent. Porcelain and china to some extent, but not so much now as formerly.

Q. What is that blue set there?

A. I should call that a child's toy tea-set or coffee-set.

Q. Would you not call it earthenware?

A. No, sir; not in the commercial classification. Earthenware means, like tinware, a certain class of articles, but it is divisible into

59 several classes. As a rule these toys are made of earthenware.

Q. Then they only differ from earthenware in the size?

A. No, sir; regular earthenware dealers would not like to be called toy dealers, and the materials would probably be the same.

Q. If they were similar in quality would they not be called earthenware?

A. It might be considered of the same material, although of a coarser quality.

Q. Is not that (blue set) what is called common granite known as CC?

A. I do not know that.

Q. You call yourself an expert in earthenware?

A. No, sir; I do not.

Q. Are not cups and saucers of the CC grade, identical with that blue set, imported in large quantities for the use of adults?

A. Not to my knowledge.

Q. Is not that because you are engaged in a particular line of this
60 trade, and do not know anything about the other? You do not mean it may *it may* not be so?

A. Well, I do not think it is so.

Q. You are a toy dealer?

A. We are toy dealers and general importers besides, although we do not import the larger wares of that kind.

Q. Then you have not a knowledge of the larger kind at all?

A. Not of all.

Q. How long has it been since you became acquainted with that particular kind of article you see there—that blue set.

A. I cannot exactly say. I think the first samples were submitted to us between two and three years ago; but other ware of nearly the same character we have been dealing in for twenty odd years.

Q. What do you call those a-b-c plates?

A. I should call those children's toy plates.

Q. Are they not earthenware?

A. Yes, sir; they are composed of that.

61 Q. The same way with that mug?

A. Yes, sir.

Q. Do you know how they are used?

A. I could not say that I followed them after they left our hands until they were used. We sell them to jobbers for the purpose of being used for children, and they sell them again to children. We generally sell them to toy dealers.

Q. You do not know what they are used by the children for?

A I presume they are used for toys by the parties who buy them.

Q. Could not children use these plates?

A. Wherever I have seen them used, whether in my family or at other places, they were used for the amusement of children.

Q. Do you know that they are not used by children to eat off of?

A. I could not say about that. They might be.

Q. Are they not about the size of ordinary tea plates used for that purpose?

62 A. They are about that size, but they would be scarcely acceptable with such decorations.

Q. Is not that blue cream-cup larger than the ordinary cream-cup used in restaurants?

A. It is more than double the size of some I have seen; but it is not the same character?

Q. Would not that be used in a restaurant?

A. I think not. I have never seen them.

Q. Would not that be used by a poor family?

A. I do not know why it should. They could cheaper than that of the ordinary ware. This comes dearer from being in sets.

Q. What do you understand earthenware to be?

A. It is generally a composition of kaolin, feldspar, and fluxes.

Q. That sort of composition is what earthenware is made out of?

A. Generally other things are added. Each manufacturer has
63 his composition. They have different methods of tempering.

Q. But is it all known as earthenware?

A. They are classifications of earthenware; some are coarser than others. They are certain constituents in all manufactured, but it is varied by the addition of other materials.

Q. Are not all of those articles made of that material known as earthenware?

A. In the manner in which you put the question I will have to answer differently from what you expect, because we have other things made of the same composition, such as doll heads and small figures; they are not called earthenware.

Q. My question was whether they were not as to their composition earthenware?

A. Yes; as to their composition.

Q. You spoke of dolls. Are not these dolls made of china and of a different composition entirely?

A. Only to the extent I mentioned; that there are different methods of tempering by different manufacturers, according to the different
64 purposes the material is to be used; some are very fine and some are very coarse.

Q. What is the difference between china and earthenware?

A. Between porcelain and earthenware; the one is semifused so as to make it translucent, and the other is not—it is opaque.

Re-examined by Mr. PRICHARD:

Q. Do I understand that there is or is not, from the very moment a manufacturer begins to manufacture the article, a special purpose in the manufacture of this article?

Mr. VALENTINE. I object, as this witness does not know, he not being a manufacturer, but a toy dealer.

The WITNESS. I will answer, so far as my experience goes, and that experience comes from communication with manufacturers, that
65 there is that distinction from the inception of the case.

Recross-examined by Mr. VALENTINE:

Q. Since the imposition of the tariff?

A. No, sir; we imported these goods, and paid duty at 50 per cent. long before there was any change in the tariff, and we found that just as soon as the change occurred that the classification began to be changed so as to reach the higher rate, and the importers were very much troubled by that. I think the revenue officials changed the classification whenever an opportunity offers.

ANTHONY WINTERS sworn.

By Mr. PRICHARD:

Q. What is your business?

A. Importer of fancy goods and toys, No. 822 Arch street.

Q. Look at those things before you, and state what they are
66 commercially known as.

A. I would call them all toys.

Q. What are they bought and sold for?

A. We import them as such and sell them as such.

Cross-examined by Mr. VALENTINE:

Q. How long have you been in the trade?

A. Twenty years. My business is importing and selling toys and fancy goods.

Q. Are you a dealer in earthenware?

A. Not strictly. We might have a few articles of that kind, but we do a large business in toys. We have china cups and saucers that can be used that we sell as toys; but these goods we sell altogether as toys.

Q. How long have you been selling goods similar to these?

A. For the last two or three years; but we have another article
67 we get from a pottery here, the same thing, only not blue. We run that article as a toy, and they catalogue that as such, and that is an American pottery.

Q. Is that about the same size as these, or smaller?

A. Some are smaller and some are larger.

Q. What are they used for?

A. For children to play with.

Q. How do you know?

A. If we offered those goods for anything else than toys it would be thought ridiculous; they are nothing else. You might use them if you wish. Any person can use anything for anything; but they are bought exclusively as toys.

Q. How do you know they are not bought for use?

A. Children may use them to play with.

Q. Could you make a tête-à-tête set with that blue set there?

A. We do not deal in that size. I should consider that a finer
68 quality of toy tea-set; still it is a toy set. Children whose parents want to buy a higher priced set can buy them. I would call it nothing else but a toy set. You can use anything in the toy line and give it to a grown person; but still that does not alter it from a toy. One person might use it and a hundred children use it as a toy set.

Q. Are you an importer?

A. I am an importer myself.

Q. Before the imposition of the present tariff, were not articles similar to those imported as earthenware?

A. I did not get any through as earthenware. I thought there were people in New York getting them through as earthenware, and I often complained about it; but I had to pay toy prices for them.

Q. You got them all in small boxes separated by themselves?

A. Sometimes packed in barrels and sometimes in boxes; mostly they came in hogsheads wrapped up in straw, and then we put
69 them together.

Q. Do you mean to say that prior to the tariff act of 1883 you imported them in barrels?

A. I have had some since and some before that. I might be mistaken. We got other tea-sets before that time.

Re-examined by Mr. PRICHARD:

Q. Was there any difference as to the designation of those things in the trade prior to 1883?

A. No, sir; they were always called toy tea-sets. They are nothing else but toy tea-sets.

HERMAN MYERS sworn.

By Mr. PRICHARD:

Q. What is your business?

A. I am manager of the toy store of Mr. G. A. Swartz, on Chestnut street above Tenth.

70 How long have you been in that business?

A. Nineteen years.

Q. Look at those things before you and say what they are bought and sold as in the trade.

A. Toy tea-sets and toy plates.

Q. What is their purpose and object?

A. They are used for children to play with.

Cross-examined by Mr. VALENTINE:

Q. Do you sell your articles exclusively for toys, or some for use?

A. Toys and fancy goods.

Q. What is that blue set?

A. A toy tea-set.

Q. Is that not earthenware?

A. It is earthenware; it is made of clay.

Q. Is not the composition of it the same as that of ordinary earthenware which is sold in the market?

A. Yes, sir.

Q. Why, then, do you call it a toy tea-set?

71 A. It has not the same finish and shape as an ordinary tea-set that is made for family use.

Q. Is it not in the size?

A. No, sir.

Q. Is there not earthenware that is used ordinarily in families similar to that except as to size?

A. No, sir; I never saw anything exactly like it.

Q. How do you have these packed when you import them?

A. Some packed in boxes and some loose in hogsheads.

Q. How long have you been familiar with such as that blue set?

A. For the last few years.

Q. How long has it been since you imported any of these in hogsheads.?

A. Of late years things got cheaper and we could procure boxes here cheaper than we could import them, and that is the reason we got them loose and packed them here.

72 Q. That has been within a couple of years, has it not?

A. Four or five years; more than a couple.

Q. As a matter of fact, have you imported any through the port of Philadelphia in hogsheads?

A. Yes, sir.

Q. How recently?

A. I cannot tell, exactly.

Q. What was it imported as, chinaware or earthenware?

A. Toy tea-sets.

Q. Do you import those a-b-c plates?

A. Not exactly the same as these, but similar. We call them toy plates. They are used for children to play with.

Q. Are they ever used by children to eat off of?

A. They would not be pleased if they could not be used, but they are used for playthings, not for ordinary table use. I never saw them used for that, and I have often seen them used for the amusement of children.

Q. Taking any particular part of this set and separating it,
73 what would you call it?

A. That is a toy cup and saucer.

Q. What about this? (Showing blue pitcher.)

A. I have never seen any of that style, except in sets.

Q. It is much larger than that? (Showing white pitcher.)

A. Yes, sir.

Q. Is not that (blue pitcher) larger than what are ordinarily used in restaurants?

A. Yes; it is larger than the small cream pitchers.

Q. Would you call that a toy? (Showing little white pitcher.)

A. No, sir; that is not made for a toy. That is made differently; it is stronger, heavier, and more evenly made. It was made for use. The whole thing looks as if it were made for use.

Q. How about this? (Sample shown.)

A. That is a finer quality of toy.

Q. Would it not be used in a restaurant?

A. It could be. I have never seen them of that style.

74 Q. What is the difference in material of those two cream pitchers?

A. I could not tell. There may be some difference in the clay, but it is made of a similar material.

Q. You say you do not know what the difference is?

A. No, sir; I do not know what the difference of the material is. It might be out of the same original material.

Re-examimed by Mr. PRICHARD:

Q. There are other things besides toy tea-sets made of earthenware that are toys, are they not?

A. Yes, sir.

Q. Are such things as those you buy sold by toy dealers?

A. Yes, sir; they are made of the same material as these goods.

Mr. PRICHARD. I offer in evidence the English catalogues of these goods that were identified by witness.

75 *Defendant's evidence.*

JAMES K. KER sworn.

By Mr. VALENTINE:

Q. What is your business now?

A. I am examiner in the United States Appraiser's Department.

Q. How long have you been there?
A. Two years and a half.
Q. Before that what was your business?
A. Importer of china, glass, and earthenware. I was in the trade from twenty-five *or* thirty years.
Q. Are you familiar with earthen and china ware?
A. Yes, sir.
Q. You passed on these goods?
A. Yes, sir; I classed them as decorated earthenware.
Q. What is that blue set?
A. What is called a C C earthenware cream-colored after-dinner coffee-cup; a common grade of goods.
76 Q. When you were in business were articles of the same size and same kind as these you see here bought and sold and dealt in?
A. I used to import similar goods as individual sugars and creams for hotels and restaurants. I used to import large quantities of those by themselves. They were called individual sugars, creams, and tea-pots.
Q. That is what they were imported for and called?
A. Yes, sir; they were sold to restaurants as sugars and creams. Similar goods to those are used to-day.
Q. What do you understand by a tête-à-tête set?
A. A tea-pot, one sugar, one cream, and two cups and two saucers, and a china tray to hold them.
Q. What is the size of an ordinary tête-à-tête set in comparison with these?
A. About the size and about the larger size in the box there
77 They are used for the sick-room generally.
Q. They may be used readily for that purpose?
A. Yes, sir; very readily.
Q. How about the size of those cups in comparison with after-dinner coffee-cups?
A. They are about the same size. Some are larger and some are smaller. That is about the usual size. Dinner sets are imported of this same size, and that very pattern. (Referring to the blue set.)
Q. You are familiar in the trade with dishes used on the table?
A. Yes, sir.
Q. What do you say as to those plates as to size?
A. They are known as three, four, five, and six inch muffins.
Q. What is the material of those?
A. Earthen.
Q. How about this cup?
A. It is the same thing.
Q. In ordinary importation of earthenware usually do you find plates of that size?
78 A. The same style, only deeper.
What do you call all the articles here?
A. They are all earthen. Those four sets are china, and a finer quality of goods than these. (Blue set.)

Cross-examined by Mr. PRICHARD:

Q. For at least ten years in the trade there have been what is commercially known as toy tea-sets, have there not?

A. Yes, sir.

Q. How were those tea-sets, as you understand, commercially known?

A. I call that one a toy tea-set.

Q. Describe in your own way what a toy tea-set was, as known to commerce.

A. Similar to those.

Q. Give a description of what you mean by a toy tea-set without referring to these. I want your own recollection.

A. It is pretty hard to draw the line. You can take an after-
79 dinner coffee-cup like this, and take a sugar and put them together.

Q. What I want to know is, outside of these samples, what you understand in commerce a toy tea-set to include. How large a size?

A. This set here.

Q. Without referring to these, be kind enough to describe what you understood as a toy tea-set of commerce for the last thirty years.

A. A small set that a child would play with. You can take anything and make a set of it.

Q. Was it the size or purpose that determined the designation?

A. The purpose; for a child to play with.

Q. Then if it was manufactured from the start for a child to play with it would be known commercially as a toy tea-set?

A. Yes, sir; if it was manufactured for a toy.

Q. You could make a very large sized toy tea-set for children?

A. Yes, sir; and they are not made as toys, and are put together
80 in that way, and the importers call them toys.

Q. Do you or do you not know that large quantities of them have been imported in sets in boxes?

A. Yes, sir.

Q. What do you say about those?

A. I do not think that made toy tea-sets of them.

Q. The question is how the things would be known in commerce. You have said that they would be known in commerce according to the purposes for which they were made.

A. They are small tea-sets.

Q. If a man came into your store and asked for a toy tea-set, how would you determine the purpose for which it was made?

A. Toy tea-sets were always small, as far as I saw, in the trade.

Q. This, would you call a toy tea-set?

A. Yes, sir.

Q. Do you call this a toy tea-set? (Indicating sample.)

A. No, sir. That is too large.

81 Q. What do you say about that? (Showing another sample.)

A. I would call that a toy.

Q. In point of fact, do you not know that the manufacturers put in their catalogues as toy tea-sets sets fully large as this and larger? I show you the catalogue of a firm of English manufacturers dated in 1877.

A. Here are London teas, Irish teas, and toy teas. That indicates the size.

Q. Do you know what the size of those toy tea-sets are?

A. I do not know what size.

Q. Mr. Zeh has testified in your presence that the English manufacturers have but one size, which they call toys, and that was this size.

A. I do not know about that; I would not like to say as to that.

Q. Do you know anything about the manufacture of these things?

A. No, sir; I was never in the manufacturing business.

82 Q. You have heard the testimony that they put apprentices on those toy-sets and used similar material?

A. I do not know about that; I never inquired into that.

Q. Then, in point of fact, as an examiner at the appraiser's office, did you not make any inquiry as to whether they were toy tea-sets or did you form your idea from the size?

A. I form my idea from the size.

Q. And you said this was an after-dinner cup, because it was large enough to be used for an after-dinner cup?

A. That is an after-dinner cup the same as that. (Referring to cup shown to several of the preceding witnesses by Mr. Valentine.) There is no difference in the size.

Q. You very frequently use after-dinner cups of that kind; as fine as that?

A. Finer.

Q. Have you ever seen at a gentleman's table an after-dinner cup like that? (Blue set.)

83 A. Not at a gentleman's table. They are used by people who buy a cheaper article.

Q. What has been known in the trade for the last ten years as toy muffins?

A. It depends on the size.

Q. What is your definition of it?

A. I never heard of toy muffins; I have heard of four, five, six, or seven inch muffins.

Q. Look at those. (Showing catalogue.)

A. "Toy muffins, four, five, six, and seven."

Q. Are they toy muffins? (Showing toy muffins.)

A. I do not think so.

Q. Look and see if you can see a toy can.

A. That is a technical name.

Q. Does not that Trenton manufacturer call them toy tea-sets?

A. I believe they are.

Q. You have testified about restaurants. Have you ever seen a pitcher of that kind used in a restaurant? (Showing blue pitcher.)

A. Similar to that—white—not decorated.

84 Q. But you never saw anything of that pattern, that finish, and that size?

A. They do not use that pattern; they could take the same thing in white, and use it in a restaurant.

Q. What do you call that that I now show you?

A. A doll's head.

Q. Is that made of earthen ware?

A. China.

Q. Would you pass that under the head of decorated china?

A. Dolls are provided for; that is a doll's head; they are provided for in the tariff.

Q. What do you call that article?
A. A little money box.
Q. Would you put that under the head of earthernware?
A. I think I would; I think a child could put money in that.
Q. Do you not think that is a toy?
A. No more than a tin boxe is; I do not look on those cats as toys;
85 they are used for ornaments for poor people.
Q. You have no doubt that those may be made of earthenware?
A. No, sir.
Q. Would put them under the head of earthenware?
A. No, sir; they are too small.
Q. Why would you not put them under the head of earthenware?
A. They are too small; they are toys.

EDWARD B. MOORE sworn.

By Mr. VALENTINE:

Q. What is your business?
A. Appraiser.
Q. You are appraiser at this port, are you?
A. Yes, sir.
Q. Did you classify these articles here in question?
A. Yes, sir; they were classified, I believe, as decorated earthenware.
Q. What is that blue set?
A. That is a somewhat difficult question to determine. That article, as you see it there, is not only used as a tête-à-tête set for children, but at other times it is used for other purposes, practical purposes in life,
86 and we have adopted a rule in the classification that is governed to a certain extent by the condition of the importation. I, as an appraiser, if that question was brought to me and these goods were packed separately in a box by people who were dealing separately in toys, I would naturally conclude they were intended to be sold for that purpose, and would so classify them. I would give the toy dealer the benefit. But if they were promiscuously packed in hogsheads, by the quantity, by a man who dealt in earthenware and supplied restaurants and other places with that kind of ware, I would classify them as decorated earthenware. I admit that the line is a very fine one. But the whole question is surrounded with so much difficulty and the size of those things has grown from very small things to much larger, that we draw the line in that way,
87 looking to the character of the importer and the condition in which the goods are imported so as to get the intent of the importer and so classify his ware.
Q. Do you know how these were imported?
A. Yes, sir; they came in large casks; in large quantities packed in straw.
Q. Did they come in the same manner as ordinary earthenware?
A. I believe so. Earthenware generally comes in crates, barrels, or casks.
Q. Prior to 1883 how were these toys packed?
A. Prior to 1883, to the best of my knowledge, I never knew of those articles coming in in casks. They were put up as toys in cases, imported in that condition, and classified as toys. Since the passage of the tariff

act of 1883 they have been coming in in casks as earthenware was packed before. Some witnesses have testified that they were brought in in casks before, but I have no knowledge of it, and they were not quite sure, and I am quite sure they were not. I might be mistaken, though.

Q. Have you any knowledge of those plates?

88 A. This plate is known commercially as an a-b-c plate and always has been since I knew anything about it. I have never regarded it as a toy, and I do not think it is any more a toy than a chair on which a child sits at the table would be if it had the a-b-c's put on the chair. This plate is for a child to eat off of, decorated in a certain way that is pleasant to the child, and designed to attract its attention; it is not a toy.

Q. Prior to 1883 was that plate imported or classified as a toy?

A. I never knew it to be classified as a toy.

Q. Nobody asked that it should be classified as a toy?

A. No, sir. If it was done it was done without my knowledge. It was always classified as earthenware.

Q. That is, it was commercially known, and for the purposes of paying duty it was known to you as earthenware?

89 A. Yes, sir; an a-b-c plate as earthenware.

Q. How about the mug?

A. I do not call that a toy. It is intended for a child to drink out of at the table. It is not a plaything in any sense of the word. It is a useful article for a child to drink out of, and intended for that purpose and that only, in my judgment.

Cross-examined by Mr. PRICHARD:

Q. What was a toy can prior to 1883 in the trade?

A. I suppose it was that article. (Referring to sample.)

Q. Was there any difference between the commercial designation of those plates prior to and after the act of 1883?

A. Not that I know of. Immediately after the tariff act of 1883 they claimed these as toys.

Q. In point of fact, were they not called in the trade and catalogued in the trade as toy muffins prior to 1883?

90 A. No, sir; I think they were always called a-b-c plates, and are now, although you have interpolated the word toy in the invoice.

Q. Do you not know that interpolation, as you call it, consists of an omission in two lines of a large number of items?

A. I only know that the word toy was interpolated after the line was written.

Q. What would you say was the commercial designation of those plates now?

A. Decorated earthenware.

Q. If you wanted to buy those in a china store what would you ask for?

A. I would ask for an a-b-c plate.

Q. Do you not know they are now called toy muffins in the catalogues of the trade?

A. They may have changed it.

Q. You do not know anything about that?

A. I know what they have been invoiced as, and that is all I know about it.

Q. You do not know then how they are designated by the manufacturers and dealers?

91 A. I know what they are called on their invoices. They called them a-b-c plates, and they call them so now.

Q. As I understand it, if this thing is imported in a box like this by a toy dealer you assess a duty on it as a toy?

A. I think I would, although that is a large size. I say it is very difficult thing to arrive just at the point where you are going to cut off. If it was packed by a toy dealer, as toys would be packed, I would give him the benefit of the doubt. If, on the other hand, if it was imported by an earthenware dealer, and packed as earthenware, I would classify it as decorated earthenware.

Q. These casks that come in contain a certain number of sets?

A. Casks are capable of holding a certain number.

Q. They are so many in each cask?

A. There were in those. They were imported in that way; so many sets.

Q. You have heard the testimony here that the German toy tea-

92 sets, as a rule, are imported in boxes, and that the English, as a rule, are imported in casks, because it is cheaper to pack here?

A. That is of recent origin, to the best of my judgment.

Q. Have you investigated that?

A. I do not know anything about what induced them to import the goods in that way; to change the practice. I simply know the fact.

Q. What do you know about the quality of this ware as compared with the workmanship, finish, and style of similar ware for table use?

A. I think this ware is just as good as much of the regular earthenware set that come in of this style. I can bring you regular earthenware sets just as inferior in quality and manufacture as these, of this same ware, and I do not think you will find anybody who is familiar with the trade that will say I cannot.

Q. Have you ever seen a cup and saucer like that used as an after-dinner coffee cup and saucer?

93 A. Never.

Q. Have you any reasons to suspect that any man in these United States is so insane as to import these by the gross for the purpose of selling them as an after-dinner coffee-cup?

A. I say I do not know what they might do. That is a very inferior grade; but it is not any more inferior either in quality or material or manufacture than some of the regular earthenware sets of that description. It is not necessary to decorate any plate.

Q. You do not call that a decoration? (Referring to sample a-b-c plate.)

A. I do; it is a decoration, but very inferior.

Q. Then you think this plate would be put on a gentleman's table as an ornamented plate for the use either of children or of anybody else?

A. That depends on the sense you use the word gentleman. Earthenware is made to suit different conditions in life. Some people would buy that. I do not suppose you would, but there are some people

94 who would.

Q. Do you think that would be an ornament for anybody except a child?

A. No, sir; I think it is for a child, as a matter of course, but it is for a useful purpose for a child; not to play with. I think this ordinary willowware would be better without decoration than with it, as far as that goes.

By the COURT:

Q. There is no doubt that the decorations on that plate are of such a quality as to be adapted to a child?

A. Most unquestionably; but the question is whether it is a toy.

By Mr. PRICHARD:

Q. If you found that a Trenton manufacturer called this same article a toy, you would not suppose that was done to cheat the Government?

A. I would not.

Q. I presume of course you made inquiries of American manu-
95 facturers to ascertain whether they did call this a toy?

A. I do not know that I did inquire.

Q. I now show you a catalogue of a Trenton manufacturer. Is there any toy ware in that catalogue?

A. Yes, sir; show it to me and I will tell you whether I think it is a toy or not.

Q. There are some? (Showing samples.)

A. I think that is a toy. It would depend on how it was imported, because there is no man living can draw a distinction.

Q. What do you call this? (Showing sample?)

A. If put up and sold in that way I would call it a toy.

Q. This one is just as big as the other?

A. Yes, sir; if these came in quantities, by the crate, imported by a dealer in earthenware, I would hesitate about calling it a toy.

Q. In other words, the Government officials offer a premium to importers to get their packing done abroad.

96 A. Not at all. As I said before, these are used, and we know they are used for other purposes other than for children, and we must draw the line somewhere, and if they are put up as toys we give the toy dealer the benefit.

Q. Did you ever see a pitcher of this kind of ware and finish used as a cream-jug in a restaurant?

A. There is a restaurant down on Second street, kept by Mr. Hart, I think, where they use an article very much like that—not decorated like that—with the design of a turtle, but not finished any better than that.

Q. Have you ever seen any of that pattern and that style?

A. That particular pattern. I am not controlled by the decoration on the outside in deciding as to whether it is a toy or not. There are other decorations of this material. You are depending on the decorations on this particular earthenware. I can bring you the same thing that is otherwise decorated, probably better than that, which present a different appearance.

97 Q. Have you ever known of after-dinner coffee-pots in use of that quality of ware and workmanship and finish, not of that same pattern?

A. I say I do not know whether they are or not, but I have seen some no better decorated than that. I have to meet that article decorated in various ways, some better and none more inferior, or probably there would be some.

Q. Have you ever known as inferior a cup and saucer as that (showing sample) to be used as an after-dinner coffee-cup and saucer?

A. I never have.

Q. Have you ever seen used on the table a tea-pot as inferior as that? (Showing sample.)

A. Not of that pattern style.

Q. Of that general style?

A. Yes, sir; of that general style. I have seen that general style of tea-pot at a restaurant, that people drink out of who go in and get a pot of tea; as inferior in quality of clay as that.

Q. Was not that white?

98 A. Sometimes white.

Q. Are they not always thicker in a restaurant, so that they cannot ordinarily be broken by hard users?

A. Some I do not think are any thicker than that, and of as inferior earthenware. (Referring to sample.)

Adjourned until Tuesday, April 7, 1885, at 10 o'clock a. m.

APRIL 7, 1885.

The trial of the case was resumed at 10 o'clock a. m.

THOMAS MADDOCK sworn.

By Mr. VALENTINE:

Q. Where do you live?

A. In Trenton, New Jersey.

99 Q. What is your business?

A. Earthenware manufacturer.

Q. How long have you been in that business?

A. I have been connected with that business a little over fifty-five years.

Q. Where?

A. In England and the United States.

Q. How long have you been in that business in this country?

A. Thirty-five years.

Q. Have you been at Trenton for thirty-five years?

A. No, sir; I have been in Trenton since 1872.

Q. You are in the earthenware business?

A. Yes, sir.

Q. What is that blue set?

A. Earthenware; printed set.

Q. How long has it been since that kind of ware has been manufactured? I want you now to explain about the different sizes in the manufacturing of this earthenware.

A. Do you mean as to quality?

Q. I mean generally, as to the manufacture of the ware, of the

100 different sizes, and the existence of these sizes; and then explain

how long it has been since that particular size has been manufactured, and all about it.

A. That style of goods (blue set) was known in the business before I was born; that is the same kind of goods that was manufactured originally by Josiah Wedgewood and called queensware. Originally, earthenware was made from clay only. Clay in those days was called earth. Since the late discoveries by Sir Humphrey Davy and others clay is considered a mineral now, and al/uminum is the base of it. Clay is the oxide of al/uminum. Originally this ware was called earthenware, because it was made of clay or earth. Before the time of Josiah Wedgewood earthenware was made of pure earth only, that is, of clay only. The discoveries of Josiah Wedgewood found out a new substance, which was very white, called flint; silica is the chemical name. By adding a certain quantity of this silica along with the clay or al/umina he got a whiter body,
101 whiter than it was originally, and he made ware of it, and one of his first efforts was to make a very nice set and present it to the Queen of England, who was the Queen of George III, and hence the name of queensware; that was the first made. A great number of the dealers of earthenware in England took their name from that, and hence they were called queensware dealers. A great many retain that name to the present day out West; those goods here (referring to blue set) are equal to what Josiah Wedgewood called queensware. His were a little finer manipulated, but the substance was the same as in that blue set; that quality has been known very well for fifty or sixty years to my knowledge; that is a very old pattern; that same quality and style of goods was sold in the United States forty years ago very generally, and of no better quality than that; that pattern was taken from an old Chinese pat-
102 tern, and it is called willow; that is the name of that pattern down to this day. It has been revived again at the present time. It went out about thirty years ago, and now it is come in again as a new thing.

Q. How about the sizes of the ware?

A. There was a list agreed upon in England in the earthenware trade in the year 1814. The goods that are bought here are bought differently from the way a person buys them in England. They are bought there on the 1814 list of prices with a discount. They have certain set terms. For instance, tea-pots were 18's, 24's, 30's, and 36's; those were the known sizes. A person would get 24's for the same price as the 30's, but would get more because they were smaller. Afterwards they got to make the smaller sizes, and instead of giving them a technical name they were called "toy." "Toy," technically, in our trade means a smaller size than the usual size; that was the meaning of the toy tea-pot; that is a toy
103 tea-pot. (Referring to blue set.) It is as much an article of use as either the 36's, 30's, 24's, or 18's; that tea-pot is made for use, and it demonstrates itself that it is so. You find a hole in that cover; that shows it is intended for use, because that is to let out the steam. It is not a toy. All earthenware tea-pots are made with a hole in the cover to let the steam out. You will observe there is no hole in the lid of this sugar; it was not intended to put tea in that. These are smaller sizes than usual, and that is the reason they are called toys.

Q. You say these sizes have been manufactured for these fifty years?

A. Yes, sir; and more than fifty; that style of goods.
Q. Do you mean the size?
A. I could not say when that size was introduced.
Q. How many years ago probably?
A. I cannot remember; I do not think it was thirty years ago.
Q. That size has been used, then, for twenty years?
104 A. I should think so; here is a list, an English list, revised in 1872.
Q. Does the word "toy" appear in that list?
A. I think it does.
Q. Refer to it and explain what it means.
A. Under the head of tea-pots there are 18's, 24's, 30's, and 36's, and then comes toy sets. A toy set consists of nine cups, nine saucers, one tea-pot, one sugar, and one cream. That blue set is a set, but those goods are sold separately, as this catalogue shows, for there is a price of a toy tea-pot, a toy sugar, and a toy cream, and the cups and saucers are distinct from them in another place; they are sold separately.
Q. What you mean to say is that this tea-pot (of the blue set), for instance, is sold separately by itself?
A. There is the list for it.
Q. But do you say, too?
A. Yes, sir.
Q. Of your own personal knowledge?
A. Yes, sir.
Q. Are they sold for use?
A. Yes, sir.
105 Q. What else do you say is sold separately besides the tea-pot?
A. The sugars, cream, and the cups and saucers.
Q. Speaking of the blue set, could they be used and are they used?
A. They are used sometimes for coffee, and they are used often for tête-à-tête and small-sized teas. The people down South like small cups and saucers, and we make them in Trenton especially for them. In England, in the earthernware, you find by this list, they make three sizes, what are called Irish teas, London teas, and toy teas. The Irish tea is used for coffee and is the largest size; the London tea is used for ordinary table use, and the toy teas are used for coffee or tête-à-tête, or anything of that kind. Each one is sold separately and bought separately.
Q. That small cup and saucer, you say, are sold for use?
A. Yes, sir.
Q. Have you manufactured and sold any that compared in size with them?
A. We have manufactured small teas for the Southern market, a
106 little larger than that small one; between that and an ordinary one. The Western people want a large one and the Southern people want a small one.
Q. What is that? (Showing a diminutive white cup.)
A. That is used for black coffee, and is what we call an after-dinner "coffee," and is mostly used for that. People can use it for tea, if they think proper. People have got very refined nowadays, and they cannot lift such large ones, and they want them very small, the ladies especially.
Q. What do you call this little pitcher?

A. That is used for milk, and is an individual cream. Cream is expensive, and sometimes at a restaurant they want to measure you a small quantity out, and give it to you in that vessel.

Q. Is that a toy?

A. No, sir; it is an article of ordinary domestic use.

Q. What is that? (Showing very small white cup.)

A. That is for domestic use, and is regularly in use in the South. The Southern people use small articles. If you were to go down to
107 the New Orleans Exhibition they would give you that (diminutive cup) filled with coffee.

Q. How do the wares, to which you have spoken, differ in quality as to the material of which they are composed?

A. As I explained to you at the beginning, Josiah Wedgewood made an improvement in earthenware; by putting in a certain quantity of flint in the clay he made whiter; by increased skill in the manufacture it can now be ground finer and more can be put into the clay, and the more it contains the whiter it becomes; that is the difference between those two articles; there is more silica in the one.

Q. You would say the same in regard to the small cup, I suppose?

A. Yes, sir; the same in regard to that.

Q. What do you say as to that darker-colored cup and saucer?

A. I do not think there is any difference in the color as compared with this (blue set); they contain about the same quantity of flint; this (blue set) looks as though it was manufactured for poorer people; the
108 poor have to have these things as well as anybody else, and in order to make them cheap there is less skill put in the finish; that is about the difference between those articles; one is more carefully finished than the other, but the material is the same.

Q. The one is a little darker in color?

A. It is a shade darker in the glaze; they have put cobalt in the glaze, which sometimes makes it a little darker.

Q. What is the difference in the printing?

A. They are printed in a different color; the one is printed with cobalt, blue, and the other printed brown, which is made with iron.

Q. It would be used for the same purpose, would it?

A. Yes, sir; certainly.

Q. Look at those plates.

A. These are not plates; I defy anybody to say they are plates, technically, in the trade.

Q. They are called muffins in the trade, are they?

A. Yes, sir; there is nothing known in the English earthen-
109 ware trade by the name of "plate" until you get up to nine and ten inches; here is one of their own lists; I will refer to it; two and a half, three, three and a half, four, five, six, and seven inch' in diameter are muffins, and then when you get to nine and ten inch' they are plates. These are fancy muffins; I have known them over fifty years.

Q. They are called fancy muffins on that list, are they not?

A. No, sir; merely muffins. I do not see them mentioned as fancy muffins. This (referring to sample) is a can. Following the same idea with mugs we have 24's, 30's, and 36's; that is twenty-four to a dozen, 30 to a dozen, and 36 to a dozen, and then when you come to a smaller article than a thirty-six you call it a can.

Q. What do you mean by 36's?

A. 36 to the dozen. In this list they are described as "fancy cans" with names; 36's.

Q. What do you mean by "with names"?

A. They sometimes have children's names on them. I have seen them with James, Thomas, and Edward, or letters.

110 Q. How are they used?

A. Cans are used for a number of purposes. They are used for coffee. If you want to buy a very expensive dinner set, a Royal Worcester, you will get them as small as that, and they are called cans. They are used in England for drinking coffee out of, and are used a good deal in taverns for drinking liquor out of. If anyone is unfortunate to die, they have a custom in England to invite the friends to the funeral, and they make hot ale, spiced ale, and they drink it out of cans. I have known them to be used in this country for drinking lemonade out of, and I have known them to be used for Tom and Jerrys.

Q. How are those muffins or plates, as we have been calling them, used?

A. They are used in a number of ways. They are used at the table for eating out of. I have known grown people in England, unfortunately, that have had to use a plate no larger than that, and who were very

111 glad to have it to eat off of. These are used for table use.

By the COURT:

Q. Would such pictures be put on for grown-up people?

A. No, sir; those pictures are put on to amuse young boys and girls. I have known them there as old as fifteen years that could not read and write, and a young boy fifteen or sixteen would be very glad to have one of those to learn his letters off of.

By Mr. VALENTINE:

Q. Are they used as a toy or plaything, or for use?

A. They are for use. I do not know of anything in the earthenware trade in England as a toy, only such as these that are made of earthenware; sheep and dogs and little things of that kind.

By the COURT:

Q. What would you mean by a toy tea-set?

112 A. I mean that (indicating blue set.) Earthenware toys in England are made by different manufacturers from those where such goods as these are made (blue set).

By Mr. VALENTINE:

Q. What do you mean by a toy set?

A. A toy set contains nine cups and saucers, one tea-pot, one sugar, one cream, and one bowl.

Q. Do you not mean a plaything?

A. No, sir.

Q. You mean small-sized earthenware?

A. If you take this tea-pot and this cream, and two cups and saucers (referring to blue set), I should call that decidedly a tête-à-tête set. No man in the world could say it was not, that would be candid and honest. A tête-à-tête set is merely a set for two people to sit together and take a cup of tea and a little chat out of. These are large enough for the pur-

pose. They are larger than what I have sold of French china for that purpose.

113 Cross-examined by Mr. PRICHARD:

Q. You say that for a great number of years, the number of which you cannot now remember, sets composed of so many saucers similar to that blue set have been known in England by the technical name of toy sets?

A. I could not say that I remember it was so, because I was not aware of any such thing when I came away thirty-five years ago.

Q. Then you have testified to the trade name from the list and not from your knowledge?

A. Not in all cases. In that particular case.

Q. Did they have toy tea-sets in England when you came away?

A. I do not remember that they did.

Q. Then, of course, you do not know whether they were called toy tea-sets?

A. I know the toys are smaller pieces than usual.

Q. Do you know what a toy can is?

114 A. Yes, sir.

Q. What is it?

A. It is a smaller-sized can than usual.

Q. Had they toy cans when you left England?

A. I told you so.

Q. Is that a toy can (showing sample)?

A. I hardly think it is. They are smaller than that. I told you they had toy cans much smaller in the Royal Worcester dinner-sets.

Q. If you wrote to that English manufacturer who publishes this list for a toy can, would you receive something like that?

A. I might receive that, and I might receive something smaller.

Q. What do you understand by toy muffins?

A. There was no such thing there when I came away.

Q. When you say poor men are compelled to use muffins, you are talking about plain muffins?

A. Not always.

Q. Do you not know, in point of fact, that what are called toy
115 muffins on this list are muffins, or small plates, as we have been calling them, with the addition of those pictures and the a-b-c's?

A. My impression is there was no such thing known until lately, and I think it has been created for the purpose.

Q. Are these in your list?

A. Yes; muffins.

Q. May that not mean on that English list a plain plate?

A. It may.

Q. Therefore, you do not know whether these particular goods are on that list or not?

A. I do not know, but I think so.

Q. For what reason?

A. I do not see why they should not be.

Q. The only reason why you think these are on that list is because you see there "muffins," and you do not see why these (lettered plate) should be excluded?

A. Yes, sir.

Q. As I understand, the test which you make as to whether these
116 articles are for use or for play is that those for use have a hole in the lid of the tea-pot to let the steam out?

A. Yes, sir.

Q. What is that? (Producing ordinary-sized tea-pot.)

A. That is an American tea-pot.

Q. Has that got a hole in the lid.

A. That has not got a hole in the lid. The Americans are more careless.

Q. Would you call that a toy?

A. No, sir.

Q. You have spoken about this willow ware. Is not this the lowest grade of willow ware that is made for use? (Showing sample.)

A. There is only one grade.

Q. That is the grade, is it not?

A. Yes, sir.

Q. Do you say, as an earthenware manufacturer, that those (blue set) are as fine as finish, quality, and pattern as that? (Sample last produced.)

A. I do.

Q. You are willing to stand by that?

A. Yes, sir.

117 Q. I want to get your definition of a toy. You say that in England you call nothing but dogs and little figures of that kind. What would you call an article like that? (Showing a lettered block.)

A. A toy.

Q. The object of the lettering on that block is the same as the object of the lettering on these plates, is it not?

A. I could not say whether it was or not. I do not know the man's object in making them.

Q. You are a father, I suppose?

A. Yes, sir.

Q. You know from your experience that this is an a-b-c block, and these are a-b-c plates, in common language.

A. I know these are called a-b-c blocks, but these are not called a-b-c plates; they are a-b-c muffins.

Q. Would you say that was a toy? (Showing witness lettered tin plates.)

A. I should not think it was; I have known them to be used for domestic purposes.

118 Q. Did you ever see a plate with a picture on like that used for domestic purposes?

A. Yes, sir; I know plenty of poor people buy such things for their children to read off of.

Q. A' I understand your definition. If a child could use an article, you would not call it a toy?

A. I would not say that.

Q. Do you know what is meant by a toy broom?

A. I do.

Q. If a child could sweep with it, would you call it a toy?

A. Yes, sir.

Q. The same way with a toy tub?

A. But if a lady was to take that same broom, which they often do—and my wife has done it—and brushed down the accumulations of dust from the upper part of a room, I would not call it a toy in that case.

Q. Suppose I imported into the port of Philadelphia a gross of those brooms, what would you say they were then?

119 A. I would call them brooms.

Q. You would not think they were toys?

A. No, sir; it depends on what they are used for. A broom can be used to play with or to sweep with.

Q. Suppose you were the appraiser of the port of Philadelphia and a gross of these small brooms were imported, what would you call them?

A. I am not an appraiser, and that is not my business. Custom might determine what I might do.

Q. You have spoken about these coffee-cups. This one is a very fine ware?

A. Yes, sir.

Q. That is made in Trenton?

A. Yes, sir.

Q. This little cup is of very fine finish?

A. Yes, sir.

Q. Have you a catalogue of your pottery here?

A. No, sir.

Q. What are these things used for in a set? (Blue set.) I do not mean as individual pieces.

A. I got a set the size of that—one tea-pot, one sugar, one cream,

120 six cups, and six saucers, and one bowl—and I had it decorated expressly, and I presented *to* to my daughter a number of years ago; I should think ten; and she has used that over and over again for domestic purposes, and invited her friends to take tea with her, and they have done so. It was in no sense a toy. It was not to be thrown down and broken; not to be played with. It was used as a domestic article and is in existence now.

Q. What was the quality of that ware?

A. It was made in Trenton; about such as that. (Indicating blue set.)

Q. Was it not more finely decorated?

A. Not the same finish, but the quality was the same.

Q. What was the style of the finish?

A. The decorations instead of being under the glaze was put on the glaze.

Q. How old was your daughter?

A. She was about ten years of age.

Q. Did she not invite her little friends in and have a little tea parties, using that set?

121 A. Yes, sir.

Q. Did she use them ordinarily on your table?

A. Yes, sir.

Q. At her meals?

A. Yes, sir; she used them at the table; had her own tea-pot and her own cups and saucers.

Q. Did you have them set on your table ordinarily?
A. Not ordinarily, but many times we had.
Q. The whole set?
A. Yes, sir.
Q. What other case do you know?
A. I know of no other case. I only know of my own case.
Q. Do you make toy tea-sets?
A. No, sir; we have made them. We are not making them now.
Q. You sold them as toy tea-sets?
A. Made them as toy tea-sets and sold them as such. It is a mere technical term. I never made them understanding they were toys to play with. I never had any such idea when I made them.

122 JOHN H. BREWER sworn.

By Mr. VALENTINE:

Q. Where do you live?
A. Trenton, New Jersey.
Q. What is your business?
A. I am manufacturer of pottery-ware.
Q. How long have you been in that business?
A. A little over twenty years.
Q. You are familiar then with what is called earthenware, are you?
A. Yes, sir.
Q, Do you manufacture it at your place?
A. Yes, sir.
Q. What are those blue cups and saucers there?
A. I suppose that is intended for a toy tea-set, but it is made up of an individual tea-pot, a sugar, after-dinner coffees, and a very large individual cream.
Q. What do you mean when you say you suppose it was intended for a toy tea-set; what do you mean by the word "toy" as used in the trade?
123 A. It has the usual number of pieces of a toy tea-set.
Q. Explain what you mean by the word "toy" as you understand it in the trade.
A. My definition of a toy would be about the same as Mr. Maddock's definition—a small set.
Q. It could be used how, and is used how?
A. For a plaything or a toy set, if it was a very small set.
Q. But a set of that size?
A. A set of that size might be used for a plaything too. You can play with anything.
Q. But how would that be known in the trade?
A. It would be used every way. It would be used for toys and it would be used an individual set and would be used for after-dinner coffees and for a tête-à-tête set. It might be used every way. I might explain what I mean by "toy" better, perhaps, by these two jugs. These are
124 known in the trade as 42's and 36's, jugs. You will notice that this 42 jug is smaller than that cream that is called a toy cream. It will hold less water. It is about the same height, but not so much in the round. Now smaller than that 42 jug would be called a toy and would probably be used for a toy unless made for a special purpose, like

that small individual cream. That was made to be used either for a toy or individual cream. This was probably made for individual cream, as it is pretty thick. They make them thicker and they make them every way. The difficulty in this case is that they want to call an article that is used for a half dozen things a special thing; they want to make it out a toy, and it has been always for something else before it was called a toy.

Q. It is used in the trade for many other purposes besides that of a plaything?

125 A. Yes, sir; and was before it was called a toy.

Q. What I mean, when it was known by the trade as a toy set, it was used for different purposes?

A. That is what I understand.

By the COURT:

Q. It is sold in the and used by persons just as they choose to use it?

A. Certainly, that is my idea; it is sometimes sold for one thing and sometimes for another. I suppose this particular set (blue set) was intended, after it was put together, for a toy set. I do not think there is any doubt about that.

Q. For the amusement of children?

A. Yes, sir; this particular set.

By Mr. VALENTINE:

Q. What about those muffins, as Mr. Maddock has called them?

A. I have always understood they were plates technically. Mr. Maddock is an Englishman, and uses the old name. I have known they were always called muffins on the other side. I have known that.

126 These can be used either for a toy or for an article of use. These pictures are evidently put on to please children.

Q. As what are they known in *in* the trade?

A. Fancy plates or toy plates.

Q. Are they an article for domestic use or a plaything?

A. They are both, just as you have a mind to make them.

By the COURT:

Q. They are not used by adults?

A. No, sir.

Q. By their size, quality, and style of decoration they are specially adapted for children?

A. Yes, sir; when I was a child I had a plate like this, with the a-b-c's on it, and I used it regularly; had it at the table every day, and would not eat off of anything else.

Q. Any person with refined, artistic taste would not be pleased with such decoration as are on these plates?

A. No, sir.

127 Q. They are intended for the amusement of children and for such use as children may apply them to?

A. Yes, sir.

By Mr. VALENTINE:

Q. What would you call that mug?

A. I would call that a 42's mug. This is sought to be made a toy mug by putting some pictures on it.

Q. Do you know how these were imported until within a couple of years?

A. No, sir. I have been in business twenty years myself and I have made toy sets myself, and I never say anything but the smallest sizes until within, I should think, six or eight years.

Q. My question is whether you know whether these had been imported with the other sizes, mixed up with them, until within a couple of years.

A. I think all I ever saw came in boxes in sets before that time—small sizes; nothing as large as these, until within a few years, has been brought from the other side to my knowledge.

128 Q. Look at this tea-pot I now hand you. Mr. Prichard asked Mr. Maddock about the lid of that tea-pot, and there was something said about American manufacturers not having holes in the lids of their tea-pots. What have you to say about the lid of that tea-pot?

A. I should say there had been a trick played on the court and jury. This is a sugar cover on a tea-pot, and sugar covers, of course, do not have holes in them. The sugar bowl that matches this size tea-pot would have a cover without a hole in it, and they have taken the cover off the sugar and put it on the tea-pot. My experience has been that whenever I have sent parties the cover of a tea-pot without a hole in it they have sent it back.

Q. Where was that manufactured?

A. I do not know whether it was manufactured in Trenton or not. It looks to me as if it was chinaware. I thought it was what we call

129 P. G. It is chinaware; it was not made in Trenton unless the Greenwich pottery made it.

Cross-examined by Mr. PRICHARD:

Q. This article I now hand you is an English earthenware tea-pot beyond all controversy?

A. I think so.

Q. Do you think that the cover of that tea-pot would have a hole in it?

A. Yes, sir; I should say so.

Q. Would you say that about this other tea-pot?

A. Yes, sir.

Q. You never heard this hole mentioned until this morning?

A. No, sir; I do not think I did.

Q. This is your catalogue?

A. Yes, sir.

Q. You have toy tea-sets?

A. Yes, sir; we have toy tea-sets and we have sugars and creams and so on separate.

Q. You have after-dinner coffee-cups in the same way?

A. Yes, sir.

130 Q. The same size?

A. Yes, sir.

Q. Exactly the same thing?

Yes, sir.

Q. At a different price?

A. I do not know.

Q. Look at that catalogue and see.

A. That would not make any difference. It is true I fixed different prices, because I get more for the after-dinner coffees; but it is the same thing. When we sell after-dinner coffees by themselves we get more money for them than when in a toy tea-set. We can afford to sell a toy tea-set cheaper because we make on the balance of the set.

Q. Then if a man bought these it would pay him better to buy them by the set?

A. The difference is very slight.

Q. Do I understand you to say if a man wanted to buy coffee-cups from you he could buy them in tea-sets at a less price?

A. He might do that; it is done; and that is what we are complaining about in this case.

131 By the COURT:

Q. Who is complaining?

A. Everybody interested. But I am no more interested than the toy dealers.

By Mr. PRICHARD:

Q. Have you ever seen a cup of that quality and style used as an after-dinner coffee-cup? (Referring to blue set.)

A. I have.

Q. Where and when?

A. They have not been used until recently.

Q. Where?

A. In Trenton; not the same thing; a little better print.

Q. I am asking about the same quality and finish and workmanship.

A. I say no better than that. The same quality; no better than that.

Q. You have seen those used as after-dinner coffee-cups?

A. I have.

Q. This is the ware used for table use of the same pattern, is it not? (Showing sample of ordinary size willow ware.)

132 A. Yes, sir; that is no cleaner but a little better print; it is no better ware than that blue set.

Q. You think it is a little more carefully finished?

A. The printing is, but the ware itself is not.

Q. Why is the printing any better?

A. This particular set has had a little too hot a fire. I do not suppose you would find another set in that crate as bad as that.

Q. So this toy tea-set could be made much cheaper than a table set, because it is not so carefully finished?

A. No, sir; there is no necessity for it. It is just as easy to make it good as poor.

Q. Do you employ apprentices?

A. Yes, sir.

Q. Does an apprentice always make as good an article as a regular man?

A. An apprentice always makes the small ones. That work is adapted to boys as their hands are smaller and they can handle them better.

Q. Did an apprentice make that?

133. A. Yes, sir; that is very fine ware, but an apprentice could make that ware.

Q. You have said these things (cream-jug in blue set) might be used in a restaurant. Do you not know, in point of fact, that such articles used in a restaurant are made thick to resist breakage?

A. No, sir; some are and some are not. I have sold it both ways; thick and thin.

Q. Have you on your catalogue the creams you sell to restaurants?

A. Yes, sir.

Q. Point out to me the ones that are as thin and fragile as this. (Cream-jug in blue set.)

A. The one that is as thin as that is our toy cream.

Q. Have you sold any toy creams you have sold to restaurants as fragile as that?

A. No, sir; but there are plenty in Trenton.

Q. You make the plain ware, but you do not make the toy plates?

A. We make the a-b-c's.

Q. With pictures on?

134 A. No, sir; but with the letters on, and we have always called them a-b-c plates.

Q. The technical name of this article in the toy trade is an a-b-c block? (Showing cubical block.)

A. I suppose so.

Q. Can you not use a tea-pot without there is a hold in the lid?

A. Yes, sir; you can.

Mr. VALENTINE. I offer in evidence all the papers in the case.

Defendant's evidence closed.

Plaintiff's rebuttal evidence.

J. ERNEST F. ZEH recalled.

By Mr. PRICHARD:

Q. You called yesterday at Mr. Hart's restaurant?

A. Yes, sir.

Q. And inquired for a cup ornamented with a turtle?

135 A. Yes, sir. I went there and ordered a half dozen oysters and a cup of coffee. I went to find out what kind of a "cream" it could have been which Major Moore saw there in use. So I inquired, and it was a long time before anybody knew. One of the girls asked me if I meant one of those turtles, and I said "That is the very thing; that is what I want." She said they did not have them in the restaurant, but she thought there was one in the house, and she would try to hunt it up for me if I would call in the morning. I called and got it. It is a mustard pot. Any one can see by the way it is made that it is expressly intended for a mustard pot.

Q. Mr. Brewer has given us the benefit of his presumption that there was a trick played with reference to those covers. Are they the original covers or substituted covers?

A. They are the original covers. At the time I imported them I noticed the lids of the tea-pots had no holes in them. We have sold

136 them over and over again, and not a single customer has complained about them. I prefer them, because those with holes have a little notch in them which gets broken off.

Cross-examined by Mr. VALENTINE:

Q. Do you not know the lids of tea-pots have holes in them?
A. Not always.
Q. Do they not usually have holes in them?
A. I could not say that.
Q. How is it you looked at these and noticed they did not have holes in them?
A. I looked at them because I had to put them up. I unpacked them myself, which I do not generally do, because we were busy. They are not English goods. They are Bohemian china.

By Mr. PRICHARD:

Q. This one is English?
A. Yes, sir.
Q. That has not a hole in the lid?
137 A. No, sir.

By Mr. VALENTINE:

Q. You say those lids belong to them?
A. Yes, sir.

CHARLES HORNER sworn.

By Mr. PRICHARD:

Q. What is your business?
A. Dealer in toys and fancy goods.
Q. What are those called in the trade? (Showing cubical block.)
A. A-b-c blocks.
Q. And what are these called? (Showing lettered tin plates.)
A. Toy plates.
Plaintiff's rebuttal evidence closed.

138 *Charge of the court.*

Judge MCKENNAN then charged the jury as follows:

GENTLEMEN OF THE JURY: The act of Congress of March 3, 1883, imposes a certain rate of duty on articles described as "toys" and a different and higher rate of duty upon articles described as "crockery ware, including plaques, ornaments, charms, vases, statuettes, painted, printed or gilded or otherwise decorated in any manner."

In this case the officers of the Government classified the articles in question as following the latter description, and therefore levied upon them a duty of sixty per cent., as specified by that portion of the act. The plaintiffs protested against the decision of the Government officials, and claimed that the articles imported were "toys" within the meaning of the act of Congress, and were, therefore, subject to the lower rate of duty of thirty-five per cent. imposed on such articles. It is for you to determine
139 under which classification the articles in question should come, and your verdict will be according to the decision you may arrive at.

The court understands the term "toys" to mean articles that are primarily intended for and may be and are ordinarily used by children for their amusement. Considering, then, the character of these articles in regard

to form, quality, price, style of decoration, and the use for which they are intended, are they toys or not?

You have heard the testimony of a number of witnesses who are persons engaged in the trade, whose business it is to buy and sell these articles, and who are, therefore, presumably familiar with the proper designation, and if from the whole of the testimony you are satisfied that in the trade this word "toy" was understood as applicable to the articles in question, the classification made by the Government was erroneous and too much duty was exacted from the plaintiffs.

140 You will observe that the act imposing this duty was passed in 1883, and the meaning of the terms employed in the act at that time is to determine the correctness of the judgment of the officers of the Government, and not any meaning that has been assigned to it since. Either the commercial designation, the trade designation, or the popular meaning of the term are to be taken as the sense in which the Congress used the words, and, therefore, to decide the classification of the articles imported and assessed for duty. It may be that articles su chas you see here *may* be used by an adult, but that does not determine the designation of the articles or the applicability of the terms of the act of Congress to such articles. It is the primary purpose for which these articles were intended and to which they are adapted that is to determine whether they come under what Congress meant by the use of the term "toys," and therefore, if these articles fall within that term thus defined, the

141 assessment of duty was erroneous and the plaintiff is entitled to recover. If you are satisfied from the weight of the testimony that at the time of the passage of this act articles of this kind were designated as toys, that is the sense in which the term was used in the act of Congress, and it must determine the rate of duty to be imposed.

The counsel for the defendant has asked the Court to say:

"1. That if the jury find that the goods in question are earthen, stone, or crockery ware, painted or guilded, or otherwise decorated or otherwise ornamented in any manner, then your verdict should be for the defendant."

That point is affirmed. If, under the testimony, the term earthenware is properly applied to this ware, as descriptive of it, that excludes it being considered as a toy, and, of course, the duty imposed on earthenware was properly assessed by the Government officers.

"2. That if the jury should find that the goods in question are

142 earthen, stone, or crockery ware, it is immaterial for what purpose they were sold or used, and your verdict should be for the defendant."

That is true, if you find these articles to be earthenware and not "toys" within the meaning of the act of Congress.

"3. That if the jury should find that the articles in question on the 3d of March, 1883, and prior thereto were commercially known and designated as earthenware, it is immaterial how they have since been known and designated."

That is true, and is affirmed; but to make it perfectly intelligible, you will bear in mind that, although it may be generally understood and commercially known as earthenware, yet, if it is also the kind of earthenware which is described and designated as "toys," your verdict would not be for the defendant, as stated in the point, but would be in favor of the

plaintiff. If they are not, however, properly described as toys, your verdict will be for the defendant.

"4. That a toy is "a plaything for children," and that if the jury
143 find that the articles in question, or any of them, are articles used by children other than as playthings, and that such articles are earthenware, then your verdict should be for the defendant as to such articles."

The Court has already defined what he understands to be meant by the word "toy," and it is not substantially different from the definition in this point; but the Court instructs you that if you find they are playthings in the sense described, it is immaterial what use is made of them by a child or any one; they are to be understood as designated by the act of Congress, and therefore subject only to the rate of duty imposed upon the articles thus described.

"5. That as all earthenware is especially provided for by the act of March 3, 1883, it cannot be taken out of its specific class and included under words of general designation."

The assumption in this point is not altogether correct. That portion of the section of the act of Congress which imposed a duty upon earthenware and all other things of that kind, such as crockery ware, including
144 plaques, ornaments, charms, vases, painted or otherwise decorated in any manner," makes a comprehensive classification of earthenware articles; but toys which are made of earthenware, or may be properly described as earthenware generally, are especially described in that portion of the act which imposes a less rate of duty upon toys than is imposed upon earthenware, so that although earthenware, in which category toys may fall, is subject to a duty of 60 per cent., yet if the term "toys" is applicable to the articles in question here, as provided in the subsequent portion of the statute, these articles will be subject only to this lower rate of duty which is imposed upon articles described as toys.

"6. That if the jury should find that these articles are sold or used for the ordinary purposes of earthenware, as drinking mugs, plates, cups, &c., then your verdict should be for the defendant."

Unless these articles are to be considered as following the descrip-
145 tion of "toys," as that term has been defined, they would not be properly so classified; but if they are sold and used as toys, although they might be used as should be thought fit, they would come under that classification.

"7. That if the jury should find that these articles are sold or used as drinking mugs, plates, cups, &c., as well as for toys for children, then your verdict should be for the defendant."

That point is declined. This is a question of designation or description. Taking the words of the act of Congress, having reference to their meaning as understood by those who are familiar with what they designate commercially, you are to determine how the articles in question should be classified. The classification is not determined by the way in which the article is applied; it may be applied in different ways.

The simple question for you to determine is whether, under the evidence, these articles were known by the name of toys in the sense in which that term is used in the trade by persons who were engaged in buying
146 and selling and making articles of this kind. If they were so prop-